

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WAYNE EARL LAFOUNTAIN,

Petitioner,

Case No. 1:20-cv-1221

v.

Honorable Janet T. Neff

RANDEE REWERTS,

Respondent.

_____/

ORDER DENYING IN FORMA PAUPERIS STATUS

Petitioner has filed a notice of appeal from a decision by the district court denying habeas relief. Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. Under Sixth Circuit Internal Operating Procedure 3, the docketing fee for a case on appeal is \$500.00. In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has failed to pay the fees.

The Sixth Circuit has determined that “a prisoner who is unable to pay the required filing fees may seek leave to file an appeal in a Section 2254 or Section 2255 action pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure.” *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). But, under Rule 24(a)(3) and 28 U.S.C. § 1915(a)(3), where the Court has certified that an appeal would not be taken in good faith, Petitioner is not authorized to proceed on appeal *in forma pauperis*.

The Court has already certified that an appeal would not be taken in good faith. (ECF No. 4.) Therefore, if Petitioner wishes to proceed with his appeal, Petitioner is informed that

within 28 days from the date of this notice he must pay the \$505.00 appellate fee to the Clerk of this Court within 28 days of this order. *See* 28 U.S.C. §§ 1913, 1917; 6 Cir. I.O.P. 3; Court of Appeals Miscellaneous Fee Schedule § 1 (Dec. 1, 2013). Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirements set forth in Fed. R. App. P. 24(a)(5). Petitioner is also notified that if he fails to pay the filing fee or to file the required documents, the Court of Appeals may dismiss Petitioner's appeal for want of prosecution.

Accordingly,

IT IS ORDERED that Petitioner is **DENIED** leave to proceed on appeal *in forma pauperis*.

Dated: February 25, 2021

/s/ Ray Kent
Ray Kent
United States Magistrate Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.